

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MICHAEL CAPOBIANCO

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

O'Hanlon Law Firm, 1500 JFK Blvd, Ste 1410
Philadelphia, PA 19102. 267.546.9066.

DEFENDANTS

OFFICER WINCKLER BADGE 6880

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983.

Brief description of cause:
Illegal seizure & excessive force.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
250,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/19/2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: c/o O'Hanlon Law Firm, 1500 JFK Blvd, Ste 1410, Phila. PA 19102

Address of Defendant: Law Dept. for the City of Philadelphia.

Place of Accident, Incident or Transaction: Philadelphia

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/19/22

Must sign here: _____

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable) 208428

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases

(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Stephen O'Hanlon, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 7/19/22

Sign here if applicable: _____

Attorney-at-Law / Pro Se Plaintiff

208428

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL CAPOBIANCO,

Plaintiff,

v.

**POLICE OFFICER WINCKLER
(BADGE # 6880, 8TH POLICE DISTRICT),**

Defendant.

CIVIL ACTION

NO.

**JURY TRIAL
DEMANDED**

COMPLAINT AND JURY DEMAND

Plaintiff, Michael Capobianco, by and through his undersigned counsel of the O'Hanlon Law Firm, P.C., hereby demands a trial by jury and complains against the above-captioned Defendant in his individual capacity as follows:

Statement of Claim and Jurisdiction

1. This is an action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth Amendment to the United States Constitution, against Defendant Officer Winckler in his individual capacity. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343.

2. It is alleged that the individual police officer Defendant Winckler ("Defendant") under color of law made an unreasonable seizure of the person of Plaintiff, violating his rights under the Fourth Amendment to the United States Constitution and Defendant also engaged in excessive force also violating Plaintiff's rights under the Fourth Amendment to the United States Constitution.

Parties

3. Michael Capobianco (hereinafter “Plaintiff”) is a citizen of the United States and at all times relevant to the claims arising herein, was citizen of the Commonwealth of Pennsylvania and resident of Philadelphia County.

4. Defendant Winckler, was at all times relevant to this Complaint duly appointed and acting officer of the Police Department of the City of Philadelphia, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of the Commonwealth of Pennsylvania and/or the City of Philadelphia.

Facts

5. On or about February 5, 2022, Plaintiff, who is a Liquor Restaurant and Bar license holder, appropriately parked his vehicle in front of his designated store at Pennsylvania Wine & Spirits located at Franklin Mills in Philadelphia.

6. Plaintiff parked in the assigned and appropriate parking place for liquor license holders.

7. Plaintiff saw Defendant writing a ticket for Plaintiff’s vehicle outside the store. Plaintiff explained to Defendant that he was in the business for 25 years. Defendant told Plaintiff that Plaintiff should have a special license on his vehicle. Plaintiff told Defendant that this was untrue and Defendant had been made aware of this previously.

8. Plaintiff and Defendant entered the store and the store clerk showed Defendant that Plaintiff had a liquor license for Plaintiff’s home store and it was explained that Plaintiff was parked appropriately.

9. Plaintiff was never combative and never threatened Defendant.

10. Despite this, Defendant pulled and dragged Plaintiff out of the store.

11. Defendant caused injury to Plaintiff's shoulder which has necessitated continuing physical therapy.

12. Plaintiff had not committed any crime and was not a suspect. Defendant had neither reasonable suspicion to detain nor probable cause to seize Plaintiff. There was no legal basis for any seizure.

13. Plaintiff was not violent and did not in any way threaten Defendant. Despite this, Defendant pulled and dragged Plaintiff out of the store, causing injury to Plaintiff with treatment continuing to this day, more than five months after the incident. Plaintiff asked Defendant to get off Plaintiff and Plaintiff informed Defendant that he could not physically assault Plaintiff for no reason.

14. After Plaintiff was dragged outside, Plaintiff requested that Defendant call a supervisor. Plaintiff asked Defendant for his name. Defendant refused to call a supervisor and Defendant refused to give Plaintiff Defendant's name.

15. Plaintiff called 911 and a supervisor came. The supervisor told Plaintiff that he should go to the 8th Police District to report the incident and Plaintiff did so.

16. Defendant knew, or should have known based on the facts, that Plaintiff did not commit any crime or offense for which an arrest or seizure may be lawfully made, yet Defendant still proceeded to seize and detain Plaintiff.

17. As a direct and proximate result of Defendant's actions, Plaintiff suffered and continues to suffer emotional distress and physical injury to his shoulder.

18. The illegal and unlawful seizure of Plaintiff, particularly in light of the fact that Defendant had full knowledge of the lack of any legitimate cause or justification, was

intentional, malicious, reckless and in bad faith. As a direct and proximate result of Defendant's actions, Plaintiff suffered and continues to suffer mental anguish.

19. As a direct and proximate result of Defendant's actions, Plaintiff also suffered physical injury requiring ongoing medical treatment.

20. The actions of Defendant, acting under color of state law, deprived Plaintiff of his rights under the Constitution of the United States; in particular, the right, to be secure in his person.

21. By these actions, Defendant has deprived Plaintiff of rights secured by the Fourth Amendment to the United States Constitution in violation of 42 U.S.C. Section 1983.

22. The actions of Defendant were malicious, illegal, unlawful, and directed at depriving Plaintiff of his constitutional rights.

Causes of Action

**COUNT ONE: 42 U.S.C. § 1983 – FOURTH AMENDMENT - ILLEGAL
SEIZURE — AGAINST DEFENDANT**

23. Paragraphs 1 through 22 are incorporated herein by reference as though fully set forth.

24. Defendant caused Plaintiff to be detained and seized in violation of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution.

25. Defendant violated Plaintiff's constitutional Fourth Amendment rights to be free from unreasonable detention and seizure guaranteed by the United States Constitution.

26. Defendant physically seized Plaintiff by pulling and dragging Plaintiff and not allowing Plaintiff to leave.

27. Plaintiff remained in the confines of the police until Defendant and his supervisor decided to release Plaintiff. As a result of Defendant's actions, Plaintiff was detained without a reasonable suspicion, probable cause, and without a valid warrant.

28. As a result of the Defendant's conduct, Defendant is liable for Plaintiff's injuries because Defendant was an integral participant in the unreasonable detention and seizure.

29. All of the aforementioned acts of the Defendant were carried out under the color of state law and by Defendant in his capacity as a police officer, with all actual and/or apparent authority afforded thereto.

30. All of the aforementioned acts deprived Plaintiff of the rights, privileges, and immunities guaranteed to citizens of the United States by the Fourth Amendment to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983, including right to be free from unreasonable search and seizure.

31. Defendant's conduct was willful, wanton, malicious, and done with reckless disregard for Plaintiff's rights and safety, and therefore warrants the imposition of exemplary and punitive damages.

32. Plaintiff should, therefore, be compensated for the violation of his Fourth Amendment rights.

**COUNT TWO: FOURTH AMENDMENT – EXCESSIVE FORCE —
AGAINST DEFENDANT**

33. Paragraphs 1 through 32 are incorporated herein by reference as though fully set forth.

34. Plaintiff was subjected to a seizure within the meaning of the Fourth Amendment through the application of force.

35. The application of force against the Plaintiff was unreasonable under the circumstances and unconstitutionally excessive.

36. The Fourth Amendment to the United States Constitution protects persons from being subjected to excessive force while being seized even if the seizure is otherwise proper.

37. Defendant, acting under color of state law, viciously and vilely attacked the Plaintiff for no reason causing extensive physical injuries to Plaintiff's body.

38. The named Defendant used excessive force in the seizure of the Plaintiff in that there was absolutely no need for the application of any force, and in view of the fact that the amount of force actually used by Defendant exceeded the amount of force which a reasonable officer would have used under similar circumstances.

39. Accordingly, no physical force of any kind was required or should have been employed against the Plaintiff here.

40. Plaintiff did not present any threat to Defendant or any other persons or property when he was assaulted.

41. Suddenly and without warning, Defendant viciously grabbed and pulled Plaintiff.

42. The quick and explosive force of Defendant's brutal attack on Plaintiff caused Plaintiff's shoulder to be injured. Plaintiff was immediately overcome with pain.

43. Plaintiff suffered extensive injuries that require ongoing physical therapy treatment.

44. The use of force was not reasonable under the Constitution where, as here, there was no need for any force at all, and most especially the force that was used.

45. Defendant had and has a personal involvement in the infringement of Plaintiff's Fourth Amendment rights. Defendant was acting under color of state law and his actions were

done by Defendant in his capacity as a police officer, with all actual and/or apparent authority afforded thereto.

46. Defendant intentionally engaged in the use of excessive force against Plaintiff whereby they viciously and criminally assaulted Plaintiff. Such conduct is outrageous, willful, wanton, malicious, and done with reckless disregard for Plaintiff's rights and safety, and therefore warrants the imposition of exemplary and punitive damages to punish and deter the Defendant and others like the Defendant from further wrongdoing.

47. Therefore, Plaintiff should be compensated for the violation of his Fourth Amendment rights not to be subjected to excessive use of government/police force.

Prayer for Relief

WHEREFORE, Plaintiff requests that this Court:

- a. Award compensatory damages to Plaintiff against Defendant;
- b. Award costs of this action to Plaintiff;
- c. Award reasonable attorneys' fees and costs to Plaintiff;
- d. Award punitive damages to Plaintiff because of the wanton conduct of Defendant and to deter such actions in the future especially because Defendant had no justification for his actions and abused his office to engage in baseless bullying;
- e. Award such other and further relief as this Court may deem appropriate.

Demand for Jury Trial

Plaintiff hereby demands a jury trial.

Respectfully submitted,

The O'Hanlon Law Firm, P.C.


STEPHEN T. O'HANLON, ESQUIRE

DATE: July 19, 2022

The O'Hanlon Law Firm, P.C.
BY: Stephen T. O'Hanlon, Esquire
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